



August 14, 1997

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Honorable Pete Wilson  
Governor of California  
1st Floor, State Capitol  
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Dear Governor Wilson:

When the Environmental Defense Fund solemnly signed the San Francisco Bay/Delta Accord in December 1994, we had many considerations in mind, including a number which you cited in your August 12 letter to President Clinton on this subject. We, too, hope for continued progress in the CALFED program. We, too, are committed to a process which seeks to meet the legitimate goals of a variety of interested parties in planning California's water resources future.

Respectfully, however, we must note that the assertion you made several times in your August 12 letter to President Clinton, that implementation of the flow provisions required by the Central Valley Project Improvement Act would violate commitments made in the Accord, is simply not correct. We, too, believe that a deal is a deal, and accordingly we seek implementation of both the CVPIA and the Accord as written.

The "no net loss" provision to which you refer is described in two places in the Accord—under No Additional Water Cost and Impacts of Additional Listings. In both places it refers only to new actions taken in compliance with the Federal Endangered Species Act. In fact, it makes no reference to the fish restoration water previously authorized by the CVPIA. The only reference to the CVPIA appears, under Central Valley Project Credits, where the Accord clearly states that obligations of the CVP under the Accord "shall be credited toward the CVP obligation under section 3406(b)(2) of the Central Valley Project Improvement Act." This crediting acknowledges that CVP obligations under the Accord constitute a part, but not all, of the CVP's environmental water obligations under the CVPIA.

All the signatories of the Accord, including, most particularly, Dan Nelson of the San Luis Unit/Delta Mendota Canal Authority, were fully aware that the passage of the Central Valley Project Improvement Act in 1992 had resulted in a dedication—in all but extreme drought years—of 800,000 acre feet of CVP water primarily for fishery improvement purposes. Since the various units of the CVP deliver in the range of 6-8 million acre feet per year for consumptive purposes, what Congress (and President Bush in signing the CVPIA) had in essence concluded was that a modest reservation of water was appropriate to address the historic decline in fisheries occasioned by the CVP's water storage and delivery components and that this

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dedication of environmental restoration water should take precedence over CVP water deliveries for consumptive purposes.

As the junior set of contractors within the CVP, the San Luis Unit contractors understood that this Congressional decision would result in a partial reduction (perhaps 10-20 percent) of their water supply in most water years, this from a total that many observers, including EDF, had long thought was unsustainable from an environmental perspective and that had been obtained by the San Luis Unit in a series of incremental, foolish, and, quite possibly, illegal decisions by the U.S. Bureau of Reclamation. This is why San Luis Unit representatives led the opposition to the CVPIA and why they filed unsuccessful litigation to set this aspect of the CVPIA aside. Indeed, as you will recall, during the deliberations which led to the CVPIA's passage, when I personally had worked out a framework for agreement on major aspects of the CVPIA with a leading representative of the CVP Water Contractors Association, it was the intervention of Mark Borba, a powerful grower from this region of the CVP, that caused you to intervene in opposition to our effort. Fortunately, however, Congress passed the CVPIA, despite Mr. Borba's and your objections, and made the 800,000 acre foot dedication a part of the CVP's water delivery obligation.

Dan Nelson openly and honestly conceded throughout the 1992-94 period that, as a result of this 800,000 acre foot dedication and other provisions in the CVPIA dedicating water to the Trinity River and to Central Valley refuges, the CVPIA had significantly reduced the San Luis Unit's water supply expectations. For the San Luis Unit contractors now to mobilize a campaign that seeks to convince the public and its representatives that they are being unfairly treated because the United States government is hopefully about to implement what the CVPIA requires may be understandable from their perspective, but it does not comport with a fair reading of that law. Full implementation of the CVPIA was the bedrock upon which the Bay/Delta Accord was built. The San Luis Unit contractors knew this was so when they signed the Accord. They should not now be heard claiming that the Accord somehow amended what federal law clearly mandates.

Sincerely yours,



Thomas J. Graff  
Senior Attorney

TJG:arh